

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JAMES E. TUCKER,	:	
	:	
Plaintiff,	:	
	:	Civil Action No. 07-817-JJF
v.	:	
	:	
JOHN E. POTTER, POSTMASTER	:	
GENERAL, UNITED STATES POSTAL	:	
SERVICE,	:	
	:	
Defendant.	:	

**DEFENDANT’S MOTION TO DISMISS PURSUANT TO
D. DEL. LOCAL RULE 41.1 FOR FAILURE TO PROSECUTE**

NOW COMES Defendant John E. Potter, Postmaster General, United States Postal Service, by and through his counsel, Colm F. Connolly, United States Attorney, and Seth M. Beausang, Assistant United States Attorney, and hereby moves, pursuant to D. Del. Local Rule 41.1, to dismiss Plaintiff’s Complaint for failure to prosecute. In support of the Motion, the Defendant states:

1. D. Del. Local Rule 41.1 states that, “in each case pending wherein no action has been taken for a period of 3 months, the Court may, on its own motion or upon any application of any party, and after reasonable notice and opportunity to be heard, enter an order dismissing such case unless good reason for the inaction is given.”

2. No party has taken any action in this matter since the Defendant moved for a more definite statement on May 12, 2008.

3. Plaintiff’s response to the Defendant’s Motion For A More Definite Statement was due May 30, 2008. To date, Plaintiff has not responded to the Motion.

4. Under the circumstances, Defendant respectfully moves the Court for an order, after reasonable notice and an opportunity for Plaintiff to be heard, dismissing Plaintiff's Complaint for failure to prosecute. See, e.g., Morris v. Bayhealth Med. Ctr., No. 06-290-SLR, 2008 WL 78751, at *1 (D. Del. Jan. 7, 2008) (dismissing the plaintiff's complaint for failure to prosecute because the plaintiff failed to respond to the defendant's motion for summary judgment despite receiving several opportunities to do so). A proposed Order of dismissal is attached.

DATED: August 18, 2008.

Respectfully Submitted,

COLM F. CONNOLLY
United States Attorney

By: /s/ Seth M. Beausang
Seth M. Beausang (I.D. No. 4071)
Assistant United States Attorney
1007 Orange Street, Suit 700
Wilmington, DE 19801
(302) 573-6277

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JAMES E. TUCKER,

Plaintiff,

V.

JOHN E. POTTER, POSTMASTER
GENERAL, UNITED STATES POSTAL
SERVICE,

Defendant.

Civil Action No. 07-817-JJF

ORDER

AND NOW, this _____ day of _____, 2008, upon consideration of Defendant's Motion to Dismiss Pursuant To D. Del. Local Rule 41.1 For Failure To Prosecute, and all papers filed in support thereof and opposition thereto, and after having given Plaintiff reasonable notice and an opportunity to be heard, it is ORDERED that Plaintiff's Complaint is dismissed for failure to prosecute.

IT IS SO ORDERED

THE HONORABLE JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I, Seth M. Beausang, hereby attest under penalty of perjury that on this 18th day of August, 2008, I directed that two copies of the Defendant's MOTION TO DISMISS PURSUANT TO D. DEL. LOCAL RULE 41.1 FOR FAILURE TO PROSECUTE, and proposed Order, be sent to the following pro se Plaintiff by First Class Mail:

James E. Tucker
143 Wellington Way
Middletown, DE 19709
(302)378-2698

/s/ Seth M. Beausang
Assistant United States Attorney